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October 27, 2006

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Submission of ACS of Anchorage, Inc., *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281

Dear Ms. Dortch:

ACS of Anchorage, Inc. ("ACS"), by its attorneys, responds to the arguments submitted by General Communication, Inc. ("GCI") in its September 27, 2006 *ex parte* filing regarding ACS' willingness to negotiate with GCI.[1] GCI misconstrues several incidents in its efforts to portray ACS as unwilling to negotiate, and incorrectly asserts that ACS will not provide GCI UNE access on reasonable terms in the absence of a regulatory mandate.

In its *ex parte* filing, GCI cites two past instances of negotiations that both parties have already addressed at length. GCI first rehashes the argument from its Opposition claiming that ACS initiated negotiations for a UNE agreement for Fairbanks and Juneau "on the eve of the hearing" before the Regulatory Commission of Alaska ("RCA") because ACS was concerned about its expert's testimony.[2] ACS explained in its Reply Comments the inaccuracy of GCI's

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[1] *Ex Parte Submission of General Communication, Inc. to the Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281 (filed Sept. 27, 2006) ("GCI *Ex Parte*").

[2] GCI *Ex Parte* 2; *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at 39-41 (Jan. 9, 2005).

portrayal of the circumstances.[3] Contrary to GCI's description, GCI was motivated to negotiate with ACS only after the Alaska Supreme Court issued a decision in ACS' favor, reversing the RCA's decision to lift the rural exemption for ACS' affiliate – ACS of the Northland, Inc. ("ACS-Northland") – in the Glacier State Study Area and ordering the RCA to reexamine whether ACS' rural exemption for Fairbanks and Juneau should be reinstated. GCI was further motivated to enter into this agreement only after the U.S. Court of Appeals for the D.C. Circuit rendered its March 2004 decision making it clear that GCI might no longer have a regulatory right to demand UNE-P. Thus, it was the imminent termination of a regulatory mandate and the ensuing "level playing field" that brought GCI to the bargaining table.

GCI next reiterates its mischaracterization of ACS' role in GCI's certification proceeding in the Glacier State Study Area.[4] ACS has already explained that ACS' affiliate – ACS-Northland – asked the RCA to investigate GCI's representations that it would use its own facilities in Glacier State only after GCI demanded the use of ACS-Northland's facilities.[5] It was GCI who used the regulatory process to threaten ACS-Northland (vowing it would seek termination of the rural exemption if ACS did not offer UNEs to GCI).

GCI also cites a recent example of negotiations between the parties in connection with a restoration services agreement resulting from a fiber cut in August 2006.[6] This incident is not indicative of an unwillingness to negotiate on the part of ACS, but rather illustrates GCI's consistent refusal to act in a commercially reasonable manner. First, GCI inaccurately complains that ACS has deterred negotiating restoration agreements. In fact, ACS has engaged in discussions with GCI regarding redundant capacity on a number of occasions over the past few years; however, in ACS' view, GCI has been unwilling to agree to commercially reasonable terms. Further, as the attached letter from ACS' General Counsel Leonard Steinberg demonstrates, this year GCI took advantage of the emergency situation caused by the outage and demanded that ACS agree to restore GCI twice in the future for GCI's provision of restoration service once to ACS customers.[7] ACS was willing to agree to these terms, but could not agree

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[3] Reply Comments of ACS of Anchorage, Inc. in Support of its Petition for Forbearance from Sections 251(c)(3), *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 44 (filed Feb. 23, 2006).

[4] GCI *Ex Parte* 2-3; *Ex Parte Submission of General Communication, Inc. to the Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 19 (filed July 3, 2006).

[5] *Ex Parte* Submission of ACS of Anchorage, Inc., *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 3 (filed Sept. 8, 2006) ("ACS Sept. *Ex Parte*").

[6] GCI *Ex Parte* 3.

[7] Letter from Leonard Steinberg, General Counsel & Corporate Secretary, ACS, to Dana Tindall, Senior Vice President, Legal, Regulatory and Government Affairs, GCI at 1 (Oct. 3, 2006), attached as Exhibit A ("ACS October 3 Letter").

with GCI's unreasonable demand that ACS be contractually bound to provide facilities even if it no longer has any such facilities available. Alternatively, GCI requested a cash settlement of $7 million, even though the typical 30-day lease for similar capacity on this route is valued at $120,000 or less.[8] GCI's demands are inconsistent with industry norms and the best practices recommended by the FCC's Network Reliability and Interoperability Council.[9] Finally, after much posturing by GCI, the parties were in fact able to execute a commercial agreement on this matter earlier this month.

As its final example, GCI asserts that ACS has failed to submit a counterproposal in the current discussions for a UNE agreement.[10] ACS sees no benefit in dragging the Commission into these discussions. The parties ought to negotiate market-based terms without regulatory intervention. In fact, contrary to GCI's claim, ACS did submit a counteroffer to GCI on September 27, 2006. When GCI did respond on October 10, 2006, it reversed course on its willingness to commit to taking a minimum number of UNE loops, and failed to offer a substantive counterproposal. It was only after ACS requested a counterproposal from GCI in an e-mail correspondence on October 13, 2006, and in a follow-up phone call made by ACS to GCI on October 20, 2006, that GCI committed to deliver a substantive counterproposal to ACS by mid-week of October 23, 2006. Both companies understand that evaluating offers and generating counteroffers can be a demanding and time-consuming process. GCI's argument that ACS has refused to participate in these negotiations is groundless, as the parties currently continue to negotiate. GCI can best foster that discussion by negotiating in good faith rather than intentionally torpedoing negotiations and then blaming their failure on ACS.

As ACS has discussed in prior filings,[11] potential negotiations between ACS and GCI only have failed as a result of the parties' unequal bargaining power. The exorbitant demands GCI made before helping ACS restore service to its customers illustrate the difficulty that ACS faces in bringing GCI to the negotiating table. GCI makes disproportionate demands on ACS because it can. If the Commission grants ACS' petition for forbearance from its UNE obligations before GCI has completed its transition off of ACS' facilities, the resulting commercial environment will encourage the parties to successfully negotiate GCI's continued access to ACS facilities.

* * * * *

Please contact the undersigned if you have any questions regarding this submission.

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[8] Letter from Dana Tindall, Senior Vice President, Legal, Regulatory and Government Affairs, GCI to Leonard Steinberg, General Counsel & Corporate Secretary, ACS at 2 (Sept. 19, 2006), attached as Exhibit B.

[9] *See* ACS October 3 Letter 1.

[10] GCI *Ex Parte* 3.

[11] ACS Sept. *Ex Parte* 4.

Respectfully submitted,

/s/ Karen Brinkmann
Karen Brinkmann
Elizabeth Park
Anne Robinson

Enclosures

cc: Chairman Martin
Commissioner Tate

DECLARATION OF THOMAS R. MEADE

I, Thomas R. Meade, under penalty of perjury, hereby make the following declarations. I understand that this Declaration will be submitted to the Federal Communications Commission.

1. I am Vice-President for Carrier Markets and Economic Analysis for Alaska Communications Systems Group, Inc., parent of ACS of Anchorage, Inc. Among other things, I supervise the negotiation and implementation of carrier-to-carrier agreements.

2. I have reviewed the foregoing *Ex Parte* Submission in connection with the Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area (WC Docket No. 05-281). I certify that the facts set forth in the *Ex Parte* Submission are true and correct to the best of my knowledge.

Thomas R. Meade

Executed October 27, 2006

Exhibit A

ACS
Alaska Communications Systems

October 3, 2006

Dana Tindall
Senior Vice President
Legal, Regulatory and Government Affairs
General Communication, Inc.
2550 Denali Street, Suite 1000
Anchorage, Alaska 9950-2751

Sent via fax and U.S. Mail

Re: Restoration Service Agreement between ACS and GCI

Dear Ms. Tindall:

I am in receipt of your letter of September 19, 2006 regarding a restoration services agreement between Alaska Communications Systems Holdings, Inc. ("ACS") and General Communication, Inc. ("GCI"). Your assertion that ACS is repudiating the agreement is incorrect. ACS would never deny another carrier backup restoration and has every intention of living up to its obligations under the agreement reached with GCI on August 20, 2006.

ACS is disappointed that GCI unreasonably took advantage of an emergency situation to extract monopoly value. The standard practice in the industry is for one carrier to immediately back up another carrier experiencing an emergency to ensure continuity of service, public safety, and homeland security. Reasonable compensation for such services are often resolved after the fact.

Unfortunately, GCI demanded that ACS agree to restore GCI twice in exchange for the single restoration that GCI would provide to ACS prior to taking any steps to restore service to ACS' customers. This position is not only inconsistent with industry norms and practices, but it is also inconsistent with the best practices recommended by the FCC's Network Reliability and Interoperability Council. While ACS is disappointed that GCI would take advantage of a flood-induced outage to further its commercial interests, ACS did agree to the 2 for 1 deal and has every intention of satisfying these obligations.

As acknowledged in your letter to me of September 19, 2006, "GCI did not wait for lawyers to formalize the Agreement before responding to ACS' pressing need." Consequently, it is not surprising that the written agreement contains numerous provisions which were not specifically articulated or agreed to on August 20. GCI's attorneys, for example, inserted several provisions that had never even been discussed by the parties. These provisions include: (1) limitations on claims; limitation on liability; (2) successors; assignment; (3) the language of force majeure; (4) indemnification; (5) no license; special indemnification (6) relationship of the parties; (7) taxes and assessments; (8) notices and other communications; (9) entire agreement; severability; amendment; (10) no third party beneficiaries; (11) headings; (12) choice of law; venue;

(13) waiver; (14) counterparts; (15) confidentiality and proprietary information; and (16) publicity and advertising.

ACS agrees with GCI that the final written agreement should be more specific and definite than the very general terms discussed by the parties on August 20, 2006. ACS' addition of a few words to the term language is no different in kind than the several pages of additional language added by GCI. Specifically, ACS provided that its obligations will terminate no later than when "ACS ceases to provide commercial service between Anchorage and Fairbanks over its fiber optic cable facilities in existence at the time this Agreement is executed." Both GCI and ACS, then, have simply made explicit reasonable terms that were implied and anticipated by the parties on August 20, 2006.

It is unreasonable for GCI to believe that ACS obligated itself to provide restoration services to GCI 30, 40, 50 or 100 years from now long after its fiber cable asset has exceeded its commercial life. To be sure, ACS has no current plan to terminate service over its fiber optic cable or to dispose of this asset to any third party, but it never agreed to be bound to provide restoration in the event it no longer has the commercial facilities which make restoration possible. The reasonableness of ACS' position is echoed in the work of the Network Reliability and Interoperability Council which frequently refers to emergency backup being provided by carriers that have the capacity and ability to provide such services.

Although ACS never agreed to an unconditional obligation in perpetuity, we are willing to execute the agreement drafted by your counsel so long as it includes the very reasonable limitation that it terminates upon the termination of ACS' commercial service over its Anchorage to Fairbanks fiber cable asset. If GCI prefers, ACS would be willing to execute an agreement good for up to ten years without that limitation.

ACS would also be willing to enter into a reasonable cash settlement if GCI prefers that result. Your suggestion that a cash settlement requires payment of $7 million borders on extortion. The normal Anchorage to Fairbanks OC-12 30-day lease rate is approximately $120,000. ACS recognizes that GCI is entitled to something more than the "normal" rate under the emergency circumstances that existed. Nevertheless, ACS cannot imagine that any reasonable cash settlement would exceed twice the normal rate. Consequently, ACS would be willing to enter into a cash settlement with GCI for something between $150-250,000.

Finally, I reiterate that ACS does not repudiate the agreement it reached with GCI on restoration services. ACS will not, however, execute the unreasonable draft presented by GCI that purports to impose an obligation on ACS in perpetuity with no limitations. Please let me know if GCI will agree to: (1) the reasonable limitation that the obligation

is limited to ACS continuing to provide commercial service over its existing fiber asset; (2) a ten-year term without such a limitation; or (3) a cash settlement not to exceed to $250,000.

Sincerely,

Leonard Steinberg
General Counsel & Corporate Secretary

LS/dky

cc: Bill Behnke ***(via fax to 868-5676 only)***
David Eisenberg
Anand Vadapalli

Exhibit B

September 19, 2006

Leonard Steinberg
Vice President, General Counsel, and
Corporate Secretary
Alaska Communications Systems, Inc.
600 Telephone Avenue
Anchorage, Alaska 99503

Re: ACS-GCI Restoration Services Agreement

Dear Mr. Steinberg:

I am Senior Vice President of Legal, Regulatory and Governmental Affairs at GCI, and I am writing to you with respect to the terms of the restoration services agreement that ACS and GCI concluded on Sunday, August 20, 2006 (the "Agreement"). As you are aware, GCI materially performed its obligations in reliance upon the Agreement by providing ACS with emergency OC-12 restoration service so that ACS and its carrier customers could resume service to their Alaskan business and consumer customers.

Under Alaska law, the exchange of emails on August 20 documents a binding contract between the parties. ACS' after-the-fact attempt to add to the Agreement a new material provision that extinguishes ACS' obligation to provide restoration capacity to GCI in the event that ACS "no longer offers commercial service between Anchorage and Fairbanks" is inconsistent with that binding contract. GCI did not agree on August 20 to this unreasonable provision, which essentially renders ACS' obligations to GCI discretionary, and GCI will not agree to this unreasonable provision now.

ACS' restoration obligations under the Agreement are clear and unqualified. Under the terms of the Agreement, ACS is required to provide OC-12 capacity for two restoration events to GCI, and this obligation continues until GCI uses the second restoration event.[1] Furthermore, ACS is required to maintain network facilities to provide GCI with restoration services within four hours of GCI's request for such service.[2]

GCI has no intention of executing the document that Anand Vadapilli transmitted to Bill Behnke on September 11, 2006, since that document unilaterally added the new material provision to the Agreement and further attempted to limit the enforceability of the Agreement in the event that GCI declined to execute the proffered document "on or before September 29, 2006." The terms of the Agreement, as agreed to on August 20, are

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[1] The exact language in the Agreement is: "ACS's requirement to provide these restoration services shall expire upon GCI's use of the second restoration event."
[2] The exact language in the Agreement is: "ACS shall maintain network facilities to provide GCI the above restoration services within four (4) hours of GCI's formal request."

already in force due to GCI's material performance, despite this post-hoc effort by ACS to either modify or abrogate them.

Since Mr. Behnke had already made it clear both to Mr. Vadapilli and Mr. Eisenberg that GCI would not accept a post-hoc material modification of the Agreement, GCI has no choice but to interpret the September 11 document as a pre-emptive move by ACS to repudiate its obligations under the Agreement as of September 29, 2006. If ACS does not promptly retract its repudiation and acknowledge in writing that it will honor its obligations to provide restoration capacity to GCI in accordance with the terms of the Agreement, GCI will be forced to take all appropriate action to safeguard its interests in the Agreement.

If ACS is reasonably concerned about its ability to perform should it decide to discontinue "commercial service between Anchorage and Fairbanks," GCI is willing to consider amending the Agreement to add a new provision that would allow ACS to pay GCI the fair market value for whatever OC-12 restoration events GCI has not used under the Agreement when and if ACS determines it is in its interests to terminate its restoration obligations.[3] GCI estimates the fair market value of each restoration event to be $3.5 million. GCI is also willing to permit ACS to discharge completely its obligations under the Agreement by paying GCI $7.0 million today.

Finally, Mr. Steinberg, I wish to remind you that GCI acted responsibly and promptly in response to ACS' urgent request on Sunday, August 20, 2006. GCI did not wait for lawyers to formalize the Agreement before responding to ACS' pressing need. On the contrary, after the parties agreed upon the material terms of the Agreement on Sunday afternoon, GCI immediately assembled the personnel required to provision the circuits necessary to provide the requested OC-12 restoration service. Performing this work on Sunday with no prior preparation was not a small task by any means. Nonetheless, GCI made the necessary circuits available to ACS within four hours.

I understand that ACS repaired its fiber on September 6, 2006 and transitioned off the GCI network on September 10, 2007.[4] I also note that ACS waited until after it had transitioned off GCI's network to deliver the September 11 document.

GCI has now materially performed its part of the ACS-GCI deal. ACS, on the other hand, having received the full benefit of that deal, now threatens to repudiate the Agreement unless GCI agrees to accept a material new provision that eviscerates ACS' obligations to GCI. If ACS continues down its present track, GCI will be very reluctant

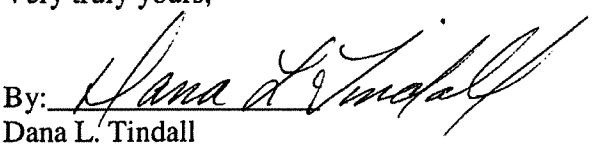
[3] This termination option, of course, could not be exercised at the time of, or during, a restoration event.

[4] Although ACS has transitioned off the GCI network, GCI is keeping the OC-12 circuits open and available to ACS for the 30-day period agreed to under the contract.

to come to ACS' aid in the future on an emergency basis in the absence of a fully executed contract with appropriate safeguards to assure ACS' performance.

I sincerely hope that we can resolve our present dispute without resort to litigation. We request a written response to this letter no later than close of business September 27, 2006.

Very truly yours,

By: 
Dana L. Tindall
Senior Vice President, Legal, Regulatory and Governmental Affairs
General Communication, Inc.

cc: Bill Behnke
David Eisenberg
Anand Vadapilli